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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 CAT'S MEOW OF VEGAS, LLC d/b/a Cat's
11 Meow,

12 Plaintiff,

13 vs.

14 THE STATE OF NEVADA, COVID-19
MITIGATION AND MANAGEMENT
15 TASK FORCE; STEVE SISOLAK, in his
official capacity as Governor of Nevada;
16 AARON FORD, in his official capacity as
Attorney General of Nevada; BARBARA
17 CEGAUSKE, in her official capacity as the
Nevada Secretary of State; CITY OF LAS
18 VEGAS; CAROLYN GOODMAN, in her
official capacity as Mayor of the City of Las
19 Vegas; ROBERT SUMMERFIELD, in his
official capacity as Director of the City of
20 Las Vegas Department of Planning; and
CALEB CAGE, in his official capacity as
21 Chairman of the COVID-19 Mitigation and
Management Task Force,

22 Defendant.
23

CASE NO. 2:20-cv-2055-APG-NJK

**DEFENDANTS CITY OF LAS VEGAS,
CAROLYN GOODMAN AND ROBERT
SUMMERFIELD'S CLOSING BRIEF**

24 Defendants City of Las Vegas, Carolyn Goodman and Robert Summerfield (hereinafter
25 referred to as "City Defendants") hereby files their Closing Brief as follows.

26 **CLOSING STATEMENT**

27 At the evidentiary hearing on Plaintiff's motion for preliminary injunction the proof offered
28 by Plaintiff failed to meet the standards for a preliminary injunction. Specifically Plaintiff has

1 failed to establish that it will suffer irreparable harm if the injunction does not issue. Plaintiff
 2 failed to meet its burden in two aspects: First, it failed to establish that it could not financially
 3 survive without injunctive relief, and: Second, that Plaintiff's First Amendment rights have been
 4 violated by promulgation and implementation of Governor Sisolak's Emergency Directives.

5 ***FINANCIAL HARM***

6 At the evidentiary hearing Plaintiff offered the testimony of Ryan D. Carlson. Mr. Carlson
 7 testified that he was the operations manager for Plaintiff Cat's Meow. Upon direct examination
 8 Mr. Carlson testified that Cat's Meow currently has approximately \$90,000.00 cash on hand. But,
 9 on cross examination, Mr. Carlson testified that he did not know who owned Cat's Meow. To date
 10 Cat's Meow has not produced any evidence of who the individuals are that created the legal entity
 11 that owns and operates the Cat's Meow and Mr. Carlson claimed under oath that, despite being
 12 hired to start up and run the Las Vegas Cat's Meow location, he did not know who the owner or
 13 financial backer was. Without information regarding the identity of such ownership and the
 14 financial wherewithal of such ownership to absorb the losses claimed by Cat's Meow it is
 15 impossible to determine if the harm allegedly being suffered by Cat's Meow is, indeed, irreparable.
 16 Finally, even if Cat's Meow could make such a showing, which it has not, mere financial loss does
 17 not constitute irreparable harm for the purposes of analyzing a request for injunctive relief. *L.A.*
 18 *Mem'l Coliseum Comm'n v. NFL*, 634 F.2d 1197 (9th Cir. 1980)

19 ***FIRST AMENDMENT CLAIM***

20 Plaintiff has failed to meet its burden to establish that its First Amendment rights are in
 21 jeopardy. Rather, Cat's Meow has forwarded an argument that the First Amendment rights of its
 22 *customers*, none of whom are parties to this case, have been curtailed by the State's prohibition on
 23 karaoke. Consequently, Cat's Meow is without standing to challenge the Governor's directives or
 24 the City's enforcement of those directives on this basis. It is well established that the constitutional
 25 right to associate does not include the right of a business owner to "associate" with his customers.
 26 See, *Freeman v. City of Santa Ana*, 68 F.3d 1180 (1985) (where the summary dismissal of a bar
 27 owner's First Amendment claim was upheld finding that a bar can be patronized by any member
 28 of the public.)

1 While the *Freeman* court acknowledged “the right to associate for the purpose of engaging
2 in those expressive activities otherwise protected by the Constitution” (*Id.* at 1188) there has been
3 no such showing in this case. That is, the Cat’s Meow has provided no evidence that any
4 constitutionally protected activity has been curtailed by the City’s enforcement action. The proof
5 offered by Plaintiff at the evidentiary hearing was wholly devoid of any evidence of any activity
6 protected by the First Amendment of which defendants’ actions have deprived the Plaintiff. As a
7 result, injunctive relief must be denied.

8 ***CONCLUSION***

9 Plaintiff has failed to meet the substantial burden required for injunctive relief against the
10 City. Plaintiff’s Emergency Motion for Temporary Restraining Order (ECF No. 5) should be
11 DENIED.

12 DATED this 25 day of January, 2021.

13 BRYAN K. SCOTT
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CERTIFICATE OF SERVICE

I hereby certify that on January 25, 2021, I served a true and correct copy of the foregoing *Defendants City of Las Vegas, Carolyn Goodman and Robert Summerfield's Closing Brief* through the CM/ECF system of the United States District Court for the District of Nevada (or, if necessary, by United States Mail at Las Vegas, Nevada, postage fully prepaid) upon the following:

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/s/ Kelli Hansen

AN EMPLOYEE OF THE CITY OF LAS VEGAS